

**From:** **Personal Matters / Ex. 6**  
**Sent:** 5/2/2019 3:47:25 AM  
**To:** ENRD, PUBCOMMENT-EES (ENRD) [PENRD3@ENRD.USDOJ.GOV]  
**Subject:** Revisd Comment United States v. Global Partners, LP, Global Companies LLC, and Chelsea Sandwich LLP, Civil Action No. 19-cv-00122

**[ Note: This is a slightly amended comment which clarifies my comments provided at 4:59 PM EDT today, May 1, 2019, in a previous e-mail.]**

RE: Public Comment on United States v. Global Partners, LP, Global Companies LLC, and Chelsea Sandwich LLP, Civil Action No. 19-cv-00122 - proposed Consent Decree (revision 1.1)

Dear Mr. Assistant Attorney General;

As a member of the public, a resident of South Portland, Maine and a retired lawyer and scientist, these are my brief comments regarding this case. These comments are focused on simply repurposing one portion of the Consent Decree .

Other commentators including the City of South Portland, Maine are suggesting a somewhat similar option in addition to many other proposals.

However, as the proposed Consent Decree now reads it is neither “fair” nor in “the public interest.” In fact, a key portion of the Consent Decree is highly inappropriate given the behavior of the EPA.

## **1. The Consent Decree as a means to reduce pollution**

No matter what the underlying basis for initiating the complaint may have been, the EPA and Global Partners have agreed to a consent decree that essentially reduces pollution in part by the following means:

- - - -

Storage Tanks. Defendants shall have no more than four (4) Heated Bulk Storage Tanks containing either No. 6 oil or asphalt at the Facility. Of those Heated Bulk Storage Tanks, no

more than two (2) shall contain No. 6 oil at any one time

Tank Heating Conditions. Defendants shall not apply heat to the four Heated Bulk Storage Tanks for at least 120 “non-heating days” in the aggregate, on a rolling 12-month basis.

Throughput Limitations. Defendants shall limit throughput to 50 million gallons per year (“gpy”) of No. 6 oil and 75 million gpy of asphalt, on a rolling 12-month basis.

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- Defendants shall install, operate and maintain mist eliminators (the “Equipment”) on the vents of each Heated Bulk Storage Tank in service at the Facility and the
- Defendants shall apply for an amended State license for the Facility that incorporates at least as stringent limits imposed by the Consent Decree and
- Apply for any additional permits and licenses needed to enable the consent decree to become operational.

- - - -

## **2. Two attempts at “false pretense” are made in the complaint and settlement decree**

The two are attempts\*:

(i) attempting to create the impression that this case deals with a serious case of particulate pollution (in addition to other pollutants) and

(ii) then suggesting an inappropriate remedy to such pollution by having the Defendant supply up to \$150,000 to assist in replacing less efficient wood stoves used primarily for heating by lower income families.

However, I checked the South Portland’s Housing Authority data base with the assistance of the Director of Housing Programs and exactly 0 (zero) of the more than 1,100 housing units

within its control used wood stoves as a primary source of heating. This is the second largest housing authority in Cumberland County which provides housing for low income people. And while the Portland Housing Authority on the opposite side of the Fore River could not immediately determine the extent of wood stoves used as a primary heating source in housing it offers – the Portland agency believes the number of units using wood stoves as a primary heating source was minuscule, if any. Plus there is no reason to believe that this is a much different result in other areas immediately surrounding South Portland - which compose the bulk of the population of Cumberland County. So low income housing in need of “high efficiency” wood stoves as a primary heating source is marginal at best.

Also undermining the EPA’s wood stove plan is the chemistry of wood stoves. The EPA has no provision for securing seasoned wood for these high efficiency stoves by low-income families. And since green wood is much less expensive that will become the fuel of choice. And there’s the rub. Green wood is considered to have up to 100% moisture content relative to air-dried or seasoned wood which is considered to be 20%. However, green wood with just a moisture content of 40% can reduce even a “high efficiency” wood stoves used primarily for heating by 50%, since driving out the moisture consumes that much energy. Coupled with the loss of energy efficiency, the same moist green wood produces creosote which coats the inside of a chimney - which then periodically ignites creating substantial particulate pollution. In addition, green wood tends to have bark which also produces a significant amounts of ash, another particulate pollutant. So at every turn the EPA’s proposed “wood stove” solution is misdirected and is simply another aspect of the “false pretense” argument that requires that the court look deeper into the proposed Consent Decree written “as is.”

Moreover, if there was any legitimate claim for serious particulate pollution created by Global, you’d expect the following:

- a claim that Global exceeded their license limit regarding particulate pollution but the EPA does not seriously claim such or
- in the alternative Global exceeded some other articulated particulate limit but there is no such claim on that account either
- also, the most likely source for particulate pollution would have been the boiler systems at the Global site used for heating No. 6 oil and asphalt. The heat the boilers produce permits these two petroleum products to flow under all weather conditions. So the most direct remedy would have been (a) replacement of the boilers with more efficient, less polluting boilers or (b) placement of scrubbers on the boiler smokestacks and/or (c) use of cleaner boiler fuels but none of these are suggested, and
- the if EPA really believed that “high efficiency” wood stoves were a real solution then the Consent Decree would have required use of EPA-certified high efficiency wood stoves but that very specific provision is also missing.

At the very least a prima facie case that false pretense was used to create a partial remedy in this matter that was entirely inappropriate. Therefore, the \$150,000 should be repurposed.

While it would be impossible at this point to make a case for outright fraud without access to the EPA's files, the Court should at least apply a higher level of scrutiny to the Consent Decree "as is."

### 3. Repurposing the remedy in part

The focus of this section is on repurposing the \$150,000 set forth in the draft Consent Decree released by DOJ on April 1, 2019.

From the public's point of view, the greatest harm in this matter was that the residents of South Portland had been potentially threatened by significant releases of volatile organic compounds (VOCs) by Global beyond the license limit for a period of years and that the EPA allowed this to persist without informing the local government so that no action could be taken to protect its residents.

A suitable remedy, therefore, should subsequently enable the local municipality to conduct perimeter monitoring of the site to gather enough data which might suggest when a license limit may be exceeded. It's more like an early warning system – rather than definitive proof of violation of the Decree. Definitive proof of a violation is more complicated in this case because pollution reduction is brought about by a combination of factors including lower product volume, dampened venting, limits on the number of days that product can be heated to permit storage or distribution and more. However, an early warning system would entail acquisition of some basic equipment (equipment like this is also used by the EPA itself):

- one or more forward looking tuned infrared (FLIR) cameras tuned to the spectral frequency of the predominant VOCs (\$10,000 to \$25,000 estimated)
- a small portable mass spectrometer (\$10,000 estimated), and
- a time lapse thermal imaging camera ( \$6,000 estimated).

That would be supplemented with a part-time staff person with environmental monitoring experience (50% fully loaded cost estimate roughly equals \$45,000 for 2 years = \$90,000)

The balance of the \$150,000 would be used by the City of South Portland for public health education regarding pollution.

This early warning system is more appropriate in this case because the community does not want a repeat performance of ***not knowing*** that a potential Clean Air Act violation has occurred and perhaps persisted for years. An early warning system therefore allows the community to act

to protect itself so nothing like this will persist again.

And the City of South Portland's comments are consistent with this vision.

#### **4. Miscellaneous comments - request for a hearing**

For all the reasons outlined above, I ask that the court hold a hearing on the fairness of the consent decree specifically as it relates to the communities most directly effected by the Decree and as it relates to the EPA's "wood stove" remedy - which is no remedy at all.

And while the Maine Department of Environmental Protection and Global Partner's management have both subjected themselves to questioning by the South Portland City Council and the public at open hearings - the EPA has refused to do likewise. And considering how many questions it's proposed remedy raises it likewise needs to explain what it thinks happened in this case and what the actual risk in terms of released pollutants were. And its Complaint and proposed Consent Decree provide little illumination on a very public problem, something which a hearing could resolve.

Respectfully submitted,

George

George Corey

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#### **Footnote**

\* "False pretenses" is used only in the common sense of the phrase. To prove a formal common law case of fraud, access to the EPA's case file would be required, which is unlikely to occur any time soon. But there is more than adequate indicia to demonstrate that the wood stove issue is bogus.

-----Original Message-----

From: [REDACTED] Personal Matters / Ex. 6

To: pubcomment-ees.enrd <pubcomment-ees.enrd@usdoj.gov>

Sent: Wed, May 1, 2019 4:59 pm

Subject: Comment United States v. Global Partners, LP, Global Companies LLC, and Chelsea Sandwich LLP, Civil Action No. 19-cv-00122

RE: Public Comment on United States v. Global Partners, LP, Global Companies LLC, and Chelsea Sandwich LLP, Civil Action No. 19-cv-00122 - proposed Consent Decree

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Other commentators including the City of South Portland, Maine are suggesting a somewhat similar option in addition to many other options.

However, as the proposed Consent Decree now reads it is neither “fair” nor in “the public interest.” In fact, a key portion of the Consent Decree is highly inappropriate given the behavior of the EPA.

## 1. The Consent Decree as a means to reduce pollution

No matter what the underlying basis for initiating the complaint may have been, the EPA and Global Partners agreed to a consent decree that essentially reduces pollution in part by the following means:

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- Defendants shall apply for an amended State license for the Facility that incorporates at least as stringent limits imposed by the Consent Decree and
- Apply for any additional permits and licenses needed to enable the consent decree to become operational.

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2. Two attempts at “false pretense” made in the complaint and settlement decree

The two are attempts\*:

(i) attempting to create the impression that this case deals with a serious case of particulate pollution (in addition to other pollutants) and

(ii) then suggesting an inappropriate remedy to such pollution by having the Defendant supply up to \$150,000 to assist in replacing less efficient wood stoves used primarily for heating by lower income families.

However, I checked the South Portland’s Housing Authority data base with the assistance of the Director of Housing Programs and exactly 0 (zero) of the more than 1,100 housing units within its jurisdiction used wood stoves as a primary source of heating. This is the second largest housing authority in Cumberland County. The Portland Housing Authority could not immediately determine the extent of wood stoves used as a primary heating source but believe it was minuscule. And there is no reason to believe that this is much different in other areas immediately surrounding South Portland - which compose the bulk of the population of Cumberland County. Consequently, the EPA’s Consent Decree’s implicit suggestion that this was a partial solution was misplaced and was misleading.

In addition, if there was any legitimate claim for serious particulate pollution related to this case in anyway, you’d expect the following:

- a claim that Global exceeded their license limit regarding particulate



pollution but the EPA does not seriously claim such or in the alternative Global exceeded some other articulated particulate limit but there is no such claim on that account either

- also, the most likely source for particulate smokestack pollution on site would have been the boiler systems at the Global site used for heating No. 6 oil and asphalt to permit product to flow but then the most direct remedy would have been (a) replacement of the boilers with more efficient, less polluting boilers or (b) placement of scrubbers on the boiler smokestacks and/or (c) use of cleaner boiler fuels but none of these are suggested

- the venting system for VOCs and then flaming them off actually will create micro-particulate matter no matter how “cleanly” it operates - so a VOC reduction using flaming off the pollutants would have created particulate pollution and/or

- the purported remedy for any particulate pollution was to have been replacing low efficiency wood stoves in Cumberland County with “high efficiency” wood stoves but the newer stoves were not specified to be EPA-certified high efficiency (lower polluting) wood stoves, which suggests that the EPA was more concerned about creating the impression of doing something than actually dealing with a real problem which does not appear from the circumstantial evidence to have been a real problem.

This is at least a prima facie case that false pretense was used to create a partial remedy in this matter that was entirely inappropriate. Therefore, the \$150,000 should be repurposed.

While it would be impossible at this point to make a case for outright fraud without access to the EPA’s files, the Court should at least apply a higher level of scrutiny to the Consent Decree as is.

### 3. Repurposing the remedy in part

From the public's point of view, the greatest harm was that the residents of South Portland had been potentially threatened by significant release of VOCs by Global beyond the license limit for a period of years and that the EPA allowed this to persist without informing the local government so that no action could be taken to protect its residents.

The remedy should subsequently enable the local municipality to conduct perimeter monitoring of the site to gather enough data to suggest when a license limit may be exceeded prospectively. This would entail acquisition of some equipment (equipment like this is also used by the EPA itself):

- one or more forward looking tuned infrared (FLIR) cameras tuned to the spectral frequency of the predominant VOCs (\$10,000 to \$25,000 estimated)
- a small portable mass spectrometer (\$10,000 estimated), and
- a time lapse thermal imaging camera ( \$6,000 estimated).

That would be supplemented with a part-time staff person with environmental monitoring experience (50% fully loaded cost estimate roughly equals \$45,000 for 2 years = \$90,000)

The balance of the \$150,000 would be used by the City of South Portland for public health education regarding pollution.

Since the overall EPA regulatory plan is multifactorial encompassing reduced product volume, limitation on heating the two products at issue and more, there is no simple monitoring regime that can fully address the issue but the proposed remedy herein would be a substantial start to provide an early warning system.

And the City of South Portland's comments on this same case supports a roughly similar vision.

#### 4. Miscellaneous comments - request for a hearing

Further, for all the reasons outlined above, I ask that the court hold a hearing on the fairness of the consent decree specifically as it relates to the communities most directly effected by the Decree and as it relates to this remarkable remedy - wood stoves - that the EPA proposed that is misleading and which unreasonably skews the remedy in this case in the wrong direction.

Respectfully submitted,

George

George Corey

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Footnote

\* "False pretenses" is used only in the common sense of the phrase. There was no pecuniary value sought in this case. To prove a formal common law case of fraud, access to the EPA's case file would be required, which

is unlikely to occur any time soon. But there is more than adequate indicia to demonstrate that the wood stove issue is bogus. Furthermore, since the EPA wood stove proposal in the Consent Decree makes no accommodation about the use of green, less expensive wood — that makes the suggestion of use of high efficiency wood stoves even more suspicious. Also, NOx emissions rise with the use of green fire wood thereby undermining another EPA argument.